



**Assessing the Effectiveness of Enforcement
Mechanisms in Upholding the Employment
Rights of Migrant Workers in Northern Ireland**

Northern Ireland Strategic Migration Partnership

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About NISMP

Northern Ireland Strategic Migration Partnership (NISMP) aims to work across the spheres of government in Northern Ireland and with other key stakeholders to ensure that Northern Ireland is a welcoming place for new migrants. It seeks to support the retention and integration of people in a way that helps meet skills and labour needs to support future economic growth. It provides a regional advisory, developmental and consultative function, enabling our partners and stakeholders to develop an appropriate Northern Ireland migration policy structure. This will ensure that Northern Ireland's needs and concerns in respect of immigration are recognised within the constraints of UK wide strategy. This paper will speak to issues directly impacting Northern Ireland in the wider context of UK immigration policy. It has been approved by representatives on the Partnership. However this does not necessarily reflect the views of Partner Organisations, some of whom have not been canvassed.

1. Introduction

A variety of reports are available on the experiences of migrant workers in Northern Ireland, factors which exacerbate their vulnerability to exploitation and efforts to address these. This paper adds to the existing information by presenting the views of enforcement agencies and support organisations and seeks to determine whether there is an emerging consensus with regard to conclusions and some positive steps which can be taken forward.

It is important to emphasize at the outset that although particular examples and patterns of migrant labour abuse are highlighted within this paper, these don't reflect the experiences of the vast majority of migrant workers in the region. Rather, it is the aim of the paper to examine whether the status of being a migrant worker increases vulnerability to exploitation in the workplace and whether this is adequately addressed by current enforcement mechanisms.

1.1 Numbers of migrant workers in Northern Ireland

A low unemployment rate and growing economy in the first decade of this century underpinned the decision to allow unrestricted access to the UK labour market for the ten newly acceded countries to the European Union. This resulted in 40,150 registrations under the Worker Registration Scheme in Northern Ireland between May 2004 and June 2010¹.

The later accession of Bulgaria and Romania (known as the 'A2' countries) to the EU has, however, been accompanied by transitional conditions which restrict A2 nationals to work in the agricultural and food manufacturing sectors (for which a Seasonal Agricultural Workers Scheme (SAWS) or Sector Based Scheme (SBS) work permit is required), or to skilled employment which requires employer sponsorship and a Workers Accession Card. They can also obtain a Registration Certificate if they are self-employed or a student². From the financial year 2007/09 to year 2011/12, 3,095 A2 nationals entered Northern Ireland under the SBS, Worker Accession Card or Registration Certificate Schemes. For the same time

¹ www.nisra.gov.uk/archive/demography/population/migration/In_Mig0809.xls

² NISMP (2012)

period 137,535 applications to enter the UK under the SAWS scheme were approved though this figure has not been disaggregated down to the UK regions³.

For non-EU migrants, access to the UK labour market is controlled through intra-company transfers and the points based system which aims to match migrant skills with gaps in the UK labour skills profile. From January 2009 to March 2012, 711 applications were received under the points based system for jobs based in Northern Ireland⁴.

Although in total an estimated 122,000 international migrants arrived in NI between July 2000 and June 2010⁵, the contribution of migration to population growth has reduced from a peak net inflow of 9,900 in 2005 – 2006 to a net outflow of 3,200 in 2010 -11. Natural change from births and deaths is currently the most significant component of population change⁶.

³ Ibid.

⁴ NISRA: PBS Fig 1.10 <http://www.nisra.gov.uk/demography/default.asp18.htm>

⁵ Northern Ireland Assembly, Feb 2012

⁶ NISRA, Oct 2012

2. Overview of current literature on the extent and nature of exploitation in Northern Ireland

2.1 Nature and incidence of migrant worker exploitation in NI

Exploitation in the workplace can affect any worker or employee, due in large part to the inherent tension which exists between the utilization and protection of waged labour. As an input to the production process labour is treated much like any other factor of production, subject to market forces of supply and demand with pressures existing from each side of this equation to either reduce or raise costs. However, as labour is clearly unlike other production inputs, safeguards are put in place by the state to protect workers against potential exploitation by employers or those involved in the supply of labour.

Exploitation can range from intentional abuse such as found in cases of forced labour, to unintentional forms resulting, for example, from ignorance of responsibilities towards an employee or poor record keeping on the part of the employer. It can be indirect, such as instances which arise from the increased use of agencies by employers seeking to reduce labour costs or it can be direct such as experienced by workers who are charged transport costs by employers to get to remote operational locations. Certain sectors also seem to be more prone to the risk of worker exploitation than others. For example, in the agricultural sector the seasonal nature of much of the work combined with remote locations and market pressures to provide ever cheaper goods for retail can result in additional pressures being exerted on labour. Likewise in the hospitality sector, shift work and high turnover of staff can leave employees open to exploitation.

For migrant workers there are additional factors which make them more vulnerable to exploitation in the workplace in all its various forms. These can relate to language barriers, restrictions placed on immigration status, discrimination, lack of knowledge about employment law and available support, or a willingness to accept conditions that may be financially more profitable than those found in their home countries or that are seen as bearable because they are considered as only temporary.

Research carried out locally has documented the various types of abuse that migrant workers have experienced in Northern Ireland. In 2011 a Joseph Rowntree Foundation report on

Forced Labour in Northern Ireland found examples of local practices which met the criteria of forced labour as identified by the International Labour Organisation:

- Threats or actual physical harm to the worker
- Restriction of movement and confinement to the workplace or to a limited area
- Debt bondage where the worker works to pay off a debt or loan and is not paid for his or her services
- Withholding of wages or excessive wage reductions that violate previously made agreements
- Retention of passports and identity documents so that the worker cannot leave or prove his/her identity and status
- Threat of denunciation to the authorities where the worker is in an irregular immigration status⁷

In 2012, NICEM published a report on the experiences of the Filipino Community in Northern Ireland the conclusions of which, while centred on this community in particular, can be applied more widely to other migrants coming into the country under Tier 2 work permits⁸. NICEM's research concludes that some employers take advantage of the additional vulnerability that non-EU nationals experience as a result of UK immigration law which ties their permit and hence their right to remain in the UK to a single employer. This concern is echoed in a report from the thinktank Centre-Forum which asserts that migrants need to be able to freely change employers in order to minimize the risks of exploitation⁹

Competition for contracts and customers places pressure on businesses to continue to lower input costs, including those related to labour. This has resulted in increased use of employment agencies which give employers a certain flexibility in the size and deployment of their workforce and has ultimately led to a 'reshaping of the labour market'¹⁰. This trend is particularly marked in the UK which at 3.00% has the highest rate of agency worker employment in Europe and the fourth highest worldwide¹¹.

While agencies offer migrant workers increased access to the labour market, the lack of job security inherent in the status of an agency worker as well as the differing terms and

⁷ Allamby et al, June 2011

⁸ NICEM, Jan 2012

⁹ Murray, A., 2011

¹⁰ Toucas and Martynowicz, Aug 2008

¹¹ http://www.ciett.org/fileadmin/templates/ciett/docs/Stats/Ciett_econ_report_2012_final.pdf

conditions of employment when compared to those of direct employees, can exacerbate vulnerability to exploitation¹². Although the employment rights of agency workers have been strengthened by the Agency Workers Regulations, which came into force in Northern Ireland in December 2011, it is as yet unclear as to how effective these have been. DEL are currently carrying out research into the impact of the regulations in the region.

2.2 Vulnerabilities of migrant workers within the employment process

Each stage of the employment process presents its own challenges for migrant workers who are at risk of exploitation. At the recruitment stage a migrant worker will find his or her access to the labour market limited either by restrictions placed on their work permit, by their level of understanding of English or by whether or not their qualifications and experience are recognized in the UK. For some, employment agencies facilitate this access. Although it is prohibited in NI for an agency to charge fees for this service¹³, the practice is common in the Philippines and some European Accession states¹⁴. This agency fee is just one of a number of costs involved in relocation. Upon arrival in Northern Ireland workers are thus in a situation where an initial debt needs to be repaid or a substantial amount of money needs to be recouped. In addition, this debt may have been taken on by a worker who is under the impression that the terms and conditions for their employment will be much more favourable than actually turns out to be the case¹⁵. In this situation the initial start up costs may not be offset by salary earned as easily as initially thought.

Once in employment, workers can be subjected to further charges levied by employers for accommodation, transport to work, or for administrative tasks such as help in filling out forms¹⁶. In addition, terms and conditions of employment are more difficult to negotiate by workers who are unfamiliar with the working culture or employment legislation of the country and who don't have the language skills or support networks to confidently challenge exploitative behaviour. In cases where exploitation is intentional employers will capitalise on

¹² Equality Commission, 2010

¹³ Department for Employment and Learning, April 2008

¹⁴ Allamby et al, June 2011

¹⁵ Ibid; Toucas and Martynowicz, Aug 2008

¹⁶ Wilkinson, Craig and Gaus, 2010

this vulnerability and attempt to obfuscate a worker's entitlements by, for example, holding their passports or immigration documents¹⁷.

Examples of exploitative working conditions that migrant workers have encountered in Northern Ireland are related in depth in existing research. Workers may be expected to be available for work at a moment's notice and to work exceptionally long hours. In a survey of 147 Filipino workers conducted by NICEM, over 36% worked more than 40 hours a week¹⁸ and, while researching conditions for workers in the mushroom industry, the JRF report found that the majority of interviewees worked excessive hours amounting to 75 per week in some cases¹⁹. In this latter example the same workers complained that in spite of the long working hours they were still unable to earn a reasonable income.

Salary is another serious concern highlighted in existing research. Salaries may be below the minimum wage, irregularly paid or include illegitimate deductions. One such example taken from existing research outlines the situation of a Lithuanian man in the fishing industry who received no payslips, had no terms and conditions and was paid below the minimum wage. His employer also refused to apply for a National Insurance number or make the required income tax deductions and made illegal deductions for what he called a 'work permit'. When the employee raised these issues, he was threatened by the employer and reported to the police²⁰.

Migrants are susceptible to discrimination in the workplace based on their nationality or race. A 2006 study into the experiences of workplace discrimination in Northern Ireland found that of 231 Filipino healthcare workers, 57.1% had been racially harassed²¹. NICEM's research into the Filipino community found that over 40% had experienced racist harassment in the workplace, varying from verbal abuse to less favourable treatment in relation to for example, breaks or division of work²². Discrimination is also noted as occurring between migrant communities with foreign national work supervisors or agency staff showing favouritism for their fellow-nationals²³.

¹⁷ Allamby et al, June 2011

¹⁸ NICEM, Jan 2012, p.22

¹⁹ Allamby et al, June 2011, p.28

²⁰ Allamby et al, June 2011, p.38

²¹ Betts and Hamilton, J. (2006)

²² NICEM, Jan 2012, p. 22

²³ Equality Commission, 2010, p. 10

Migrant workers who have their contract of employment terminated suddenly or earlier than anticipated experience an immediate impact in terms of their financial and social security, including their continued right to their accommodation in cases where this is linked to their job. This is particularly the case for workers from A2 countries who need to have worked in the UK for 12 months continuously before they are able to access public funds. For non-EU workers whose permit is linked to a specific employer, loss of employment means loss of their entitlement to remain in the UK. These factors are a strong deterrent to workers to report exploitation or discrimination within the workplace as their employment is often their only means of support and/or it constitutes their sole entitlement to remain in the country.

3. Findings

3.1 Mechanisms to prevent and address migrant labour exploitation in Northern Ireland

For this paper one-to-one interviews were held with a range of government and non-government agencies. This helped build a picture of the effectiveness of employment rights legislation in preventing and addressing the exploitation of migrant labour.

The following agencies were involved in these discussions:

Government:

National Minimum Wage Inspectorate (HMRC);

Employment Agency Inspectorate (DEL);

Agricultural National Minimum Wage Inspectorate (DARD);

Gangmasters Licensing Authority (DEFRA);

Health and Safety Executive Northern Ireland.

It should be noted that while the EAI, HSE and Agricultural NMW Inspectorate are headquartered in Northern Ireland, and have devolved powers, the GLA and NMW Inspectorate are located within national UK departments/authorities. This will affect the balance between national and local priorities within each inspectorate and consequently their ability to respond directly to local concerns.

Non-government:

Labour Relations Agency;

Northern Ireland Committee of the Irish Congress of Trade Unions (NIC-ICTU);

South Tyrone Empowerment Programme (STEP);

Law Centre;

Equality Commission;

Ethnic Minority Support Centre (based in Newry and Mourne Council).

3.2 Vulnerability to exploitation reinforced by institutional arrangements

Migrant workers were recognised by interviewees as a demographic particularly susceptible to exploitation with conditions for workers described by one government agency representative as ‘squalor’ and by a non-government agency representative as ‘horrific’. A further government agency representative described some employers as being ‘blasé’ about how they treated migrants. While factors such as language, unfamiliar working culture and initial debt incurred by start up costs were acknowledged as contributing to this vulnerability, of equal concern were aspects of institutional structures and processes which indirectly facilitate exploitation. These institutional concerns relate principally to the organisation of the labour market which has allowed for the supply of a cheaper and ever more flexible workforce in certain sectors, to the fragmented and bureaucratic approach to enforcing employment rights, and to the processes of the legal system which discourage migrant workers from pursuing legal redress.

The move to a more flexible labour market is noted in a 2008 report by the Institute for Conflict Resolution which refers to findings made by both the Migrant Rights Centre for Ireland and the Transport and General Workers Union that short-term contracts and a reliance on agency staff is replacing a permanent workforce in some industries²⁴. This trend has consequences for the protection of workers’ employment rights, a point made by several interviewees for this paper. The Employment Agency Inspectorate, the Agricultural Minimum Wage Inspectorate, the GLA and the Labour Relations Agency make particular mention of the market pressures exerted by hirers on subcontracting chains to reduce costs, with one interviewee describing the effect as a ‘drive to the bottom’ which has been exacerbated by the recession. The GLA provides labour users with a chart indicating the minimum labour costs at which a gangmaster should be able to provide labour. However the ‘massive pressures’ which exist for employers and gangmasters to secure contracts from large retailers can often exceed any contrary pressure to conform to employment legislation.

The trend towards subcontracting work and the use of employment agencies has made it difficult to attribute responsibility for labour protection within a subcontracting chain. Employment agencies which recruit mainly migrant workers are most common in sectors which are traditionally low paid such as food processing and manufacturing²⁵. It was noted

²⁴ MRCI, 2008, p.13; McKee 2006, p.36

²⁵ Equality Commission, 2010

in interview with the Agricultural Minimum Wage Inspectorate representative that prior to the expansion of the EU in 2004 and the resulting influx of migrant workers into Northern Ireland, the use of gangmasters in the agricultural and food processing sectors was practically unknown. The lack of English language skills of many migrant workers creates what was termed ‘a niche for bilingual gangmasters’. It also exacerbates the vulnerability of agency workers employed by unscrupulous gangmasters as it increases their dependency on their employer for information. This is particularly concerning for workers from A2 states who, unless they meet certain restrictive criteria, are currently limited to work in these sectors.

The Gangmasters Licensing Authority was set up in 2005 as a direct consequence of a growing prevalence of migrant labour abuse in the agricultural and food processing industries. The GLA has been given powers to enforce comprehensive licensing standards and can act against labour users as well as labour providers. There are two enforcement officers based in Northern Ireland. It was noted in interview by both NIC-ICTU and the LRA representatives that complaints against agricultural and food processing businesses have fallen since the establishment of the GLA. While the GLA enforcement officers concur that the incidence of more serious abuse cases has decreased in the sectors which come under their remit, they also warn that some issues are being displaced into other areas and advise that sectors such as construction, hospitality and care should be equally well policed. They noted that in their experience, some recruitment agencies appeared to apply higher employment standards in the agricultural and food processing sectors than they do in other areas due to the GLA regulations, an assertion also made in the Association of Labour Providers Members’ Newsletter, June 2013²⁶. While this reflects the success of the GLA as an enforcement agency, it also reveals the intent of some labour users and labour providers to abdicate their responsibilities under employment rights legislation in a strategy for minimizing costs.

Agency workers are also afforded a measure of protection under the Agency Workers Regulations (AWR) which came into force in Northern Ireland in December 2011. The regulations provide agency workers with the same basic employment and working conditions as a directly recruited employee after a qualifying period of twelve weeks in the same job. DEL is currently carrying out research into the impact of the AWR. However, among the interviewees for this paper, none had noted a significant increase in the number of queries

²⁶ http://labourproviders.org.uk/wp-content/uploads/2013/06/ALP_Newsletter_101_June_2013.pdf

relating to the regulations. The Labour Relations Agency has been logging instances of such calls to their helplines and in 2012/13 received 189 calls from migrant/agency workers related to agency conduct issue. Although they have noted a slight rise in this year to date, this 2012/13 figure must be placed in the context of 4578 calls about dismissal and 4188 about redundancy.

It is unclear as to why queries relating to the regulations are low. There may still be a general lack of awareness of their existence among affected workers or, as some interviewees suggested, some workers may be unwilling to make a formal complaint to a state organisation. Two interviewees felt that large employers were actively working to circumvent AWR responsibilities and cited examples of multinational retailers who preferred contractors who use the Swedish derogation clause contained within the AWR. Although this is a legitimate provision within the regulations, it does allow employers to continue to apply different rates of pay to agency workers than employees. The use of ‘umbrella’ companies was also highlighted as a method by which agencies are seeking to further reduce labour costs. While providing workers with a higher salary, these companies pay less tax and national insurance contributions, which have implications for longer term workers.

For many support agencies, i.e. NIC-ICTU, the Law Centre, STEP, the Equality Commission and the Newry and Mourne Ethnic Minority Support Centre, a shared concern is the lack of financial support available for workers to pursue their complaints up to the level of tribunal if necessary. Although the Law Centre, the Equality Commission and STEP are able to assist in a number of cases, for resource reasons these may be chosen for their strategic importance, leaving the majority of cases unsupported and so unable to progress beyond seeking an amicable resolution. This is reflected in figures which show that 66 percent of applicants at Industrial Tribunals and 75 percent of applicants at Fair Employment Tribunals represented themselves in 2011/2012²⁷. Unfortunately the majority of complaints received by these support agencies concern breaches of employment law such as unfair dismissal or holiday entitlement and can’t be classified as being of strategic importance. No legal aid is available for representation at the Industrial or Fair Employment Tribunals and the costs of pursuing a case independently are prohibitive for someone working in low paid jobs such as those occupied by many migrant workers. Estimates by interviewees were that costs can easily run to at least £5000 which often exceeds the compensation being pursued. It was felt that the

²⁷ Office of the Industrial Tribunals and the Fair Employment Tribunals annual report 2011/2012 see www.employmenttribunalsni.co.uk

disparity of resources between employers who were almost always represented and the complainant was such that employers had little fear of being taken to tribunal.

Although the majority of cases which are heard at tribunal are upheld in the applicants' favour (71% of Industrial Tribunal cases and 12% of Fair Employment Tribunal cases in 2012/13), these represent only a fraction of claims which are initially brought to tribunal (26.71% and 9.88% respectively for IT and FET cases in 2012/13²⁸). It was additionally noted by interviewees that the refusal of some respondents to pay the compensation awarded, is a further disincentive for many migrant workers to pursue their cases.

A further frustration with the legal system was voiced by the GLA representatives who believe that there is an ignorance on the part of the courts who approach cases of unlicensed gangmasters as a technical issue rather than as part of a narrative of exploitation.

3.3 Limitations of Education Initiatives and Information Dissemination

All agencies have made particular efforts in reaching migrant workers through making information available in a range of languages and through the use of interpreting services. Likewise, all agencies had undertaken joint initiatives with other enforcement or support organisations to educate both employers and employees on their rights and responsibilities under employment rights legislation. For example, the Department for Employment and Learning ran a number of seminars across Northern Ireland in which the EAI, the GLA, the LRA and the Equality Commission provided migrant worker representatives with an overview of employment rights. Similarly, the LRA has developed a migrant worker strategy which aims to raise awareness of their work. As part of this strategy they run seminars for migrant workers on employment rights in conjunction with the Equality Commission. They also run similar events in conjunction with community support organisations such as the Polish Association and Latinoamerica Unida. They report that people are often 'stunned' when they learn about the rights they have under employment law.

Several interviewees such as those from NIC-ICTU, the National Minimum Wage Inspectorate and STEP pointed out that many instances of exploitation stem from ignorance of the law and that education initiatives are useful in bringing these to light. However, there

²⁸ OITFET Annual report 2012-13 see [www. http://www.employmenttribunalsni.co.uk/annual_report_2012-2013.pdf](http://www.employmenttribunalsni.co.uk/annual_report_2012-2013.pdf)

are also instances where employers and employment agencies are reluctant to comply with the legislation even when their responsibilities are made clear. The interviewees from the Employment Agency Inspectorate and the GLA made a similar point suggesting that employment agencies could be grouped into those where any exploitation of the workforce that occurs is incidental and those where the abuses are more deliberate and part of the profit making strategy. This latter group is the more difficult to find and therefore prosecute.

Lack of information in accessing legal redress was a further concern expressed by support agency representatives. In particular it was felt that migrant workers were often not aware of how a complaint can be made, the alternative avenues that can be pursued in resolving an employment dispute and the time limits which exist for lodging complaints at tribunal, such as the narrow three month window for employment discrimination complaints.

3.4 Difficulties in Accessing Intelligence for Enforcement and Support

Enforcement agencies are intelligence-led and a clear concern which surfaced through the course of the interviews with both the enforcement agencies and the support agencies was the lack of contact from migrant workers. In the context of an environment where migrant workers make up 80% of the workforce in some agencies, the Employment Agency Inspectorate received only 2 complaints in the last year from migrant workers out of the approximately 15 complaints received overall. Similarly, the LRA interviewee said that ‘it is impossible to believe that there aren’t hundreds of complaints’ from the mushroom industry where practically the whole workforce is made up of migrant workers who work in conditions described by several interviewees as ‘awful’ and ‘horrific’. The LRA representative also indicated that they have had almost no contact from A2 nationals while A8 nationals definitely access their service. This is particularly worrying as most A2 nationals working in low-skilled jobs are limited to jobs under the Seasonal Agricultural Workers Scheme (SAWS) and the Sector Based Scheme (SBS) i.e. in the agricultural and food processing sectors.

Several reasons were put forward as to why it is so difficult to get intelligence of exploitation from migrant workers. Firstly, it is thought that despite the education and information dissemination initiatives, many migrant workers are not aware of their employment rights. The interviewee from the Law Centre recounted that workers may approach the centre in

relation to their dismissal but on further investigation it will be found that other terms had been breached during their period of employment.

Secondly, some workers are thought to be in situations where they are afraid to come forward. Several enforcement agencies talked of a mistrust that migrant workers can have of authority. However, STEP also reported that people can often be reluctant to pursue an employment related complaint even when they are accompanied by a friend or a colleague. Some agencies also spoke of a fear that migrant workers can have of gangmasters or recruitment agencies and of repercussions that reporting may have on their families both here and in their home countries. This is a concern which was also raised in the JRF report on forced labour in Northern Ireland and in the ICR investigation into the role of employment agencies and employment businesses in the recruitment of migrant workers²⁹.

Thirdly, some workers take the view that their situation is for the short-term only and that the economic gains to be made exceed what they could earn in their home country and outweigh the poor working conditions.

Finally, there seems to be little incentive for workers to lodge a complaint with an enforcement agency. With the exception of the National Minimum Wage and the Agricultural Minimum Wage Inspectorates which can recover payment in arrears for the complainant, other enforcement agencies can pursue an employer or recruitment agency for breach of regulations but are unable to secure compensation for the individuals concerned. Therefore, if a complainant wishes to seek financial redress, s/he may still have to go through the tribunal system which, as previously explained, can be difficult to access.

3.5 Cooperative Working

It was felt in the interviews that although government and support agencies have worked effectively together in the past, there are obstacles which prevent even greater cooperation. The greatest barrier identified was the lack of 'gateways' built into legislation which allow government agencies to share intelligence. Currently the Employment Agency Inspectorate is allowed to share information regarding minimum wage concerns with HMRC and the GLA is able to share with most other enforcement agencies. However these relationships are not

²⁹ Toucas and Martynowicz, Aug 2008 ; Allamby et al, June 2011

reciprocal. It was also noted that support agencies do not actively share intelligence with enforcement bodies. Although there are constraints on this related to client confidentiality, it was felt by some interviewees that there is scope for the non-government agencies to be more proactive in supporting enforcement bodies without breaching this confidentiality.

There was a clear recognition of the potential for community organisations to play a more proactive role in supporting the work of the government and support agencies. Both STEP and the Equality Commission made particular mention of the benefits of having an organisation to act as a bridge, build trust and aid communication between the migrant worker and the support or government agencies. The Ethnic Minority Support Centre in Newry and Mourne Council was cited as an example of good practice in this regard by the Equality Commission and was also singled out as a proactive partner by the GLA, Employment Agency Inspectorate and LRA.

4. Conclusions

The aim of this paper is to assess the effectiveness of employment protection legislation in addressing the exploitation and abuse of migrant workers in Northern Ireland. A variety of reports are available on the experiences of migrant workers, factors which exacerbate their vulnerability to exploitation and efforts to address these. This paper adds to the information already on the ground by presenting the views of the enforcement agencies and the support organisations and seeks to determine whether there is an emerging consensus with regard to conclusions and some positive steps which can be taken forward.

The influx of migration into rural areas of Northern Ireland over the last decade is at variance with the more traditional routes of migration into urban settings experienced elsewhere. This has been in response to the specific local need for a flexible and low-paid labour force of agricultural and food processing companies which need to be competitive on both price and promptness as well as quality³⁰. Migrants also constitute an increasing percentage of people employed within the health sector in Northern Ireland, particularly in auxillary and support roles. This has corresponded with an associated growth of employment agencies recruiting from overseas for this sector³¹.

Many migrant workers in Northern Ireland are employed in jobs characterised by low wages, long working hours and poor working conditions³² and are thus recognised by interviewees for this paper as a demographic particularly susceptible to exploitation with conditions for workers described by one government agency representative as ‘squalor’ and by a non-government agency representative as ‘horrific’. A further government agency representative described some employers as being ‘blasé’ about how they treated migrants.

Employment rights legislation affords a degree of protection for these workers and, for those who are employed through employment agencies, this protection has been bolstered by the Gangmasters Licensing Act, introduced in 2004, and the Agency Workers Regulations which came into operation in Northern Ireland in December 2011. However, while legislation and related enforcement mechanisms exist, through the course of the interviews a consensus

³⁰ Shuttleworth, I., 2008

³¹ Jarman and Byrne, 2007

³² Allamby et al, June 2011

emerged that exploitation of migrant labour is persisting, is particularly prevalent in certain sectors and affects some nationalities more than others.

Legislation identifies and targets the consequences of exploitation such as inadequate salary or excessive working hours. However, attention must also be paid to minimizing the factors which exacerbate vulnerability to exploitation. While these include factors inherent in the status of a migrant worker such as the language barrier, unfamiliar working culture and large start up costs, of equal concern are aspects of institutional structures and processes which indirectly facilitate labour exploitation. These institutional concerns relate principally to the organisation of the labour market which has allowed for the supply of a cheaper and ever more flexible workforce in certain sectors, to the fragmented approach of enforcing employment rights, and to the processes of the legal system which discourage migrant workers from pursuing legal redress.

Enforcement agencies are intelligence-led and so depend on individuals to report incidences of suspected exploitation. There was evident frustration on the part of interviewees from both the enforcement agencies and support organisations regarding the difficulty in acquiring the intelligence which will allow them to pursue cases of exploitation. However, in order for individuals to feel able to come forward, they must feel supported in this process. This requires a coordinated approach to enforcement which comprises victim support as well as enforcement of legislation and an understanding on the part of the legal system that breaches of employment law may be part of a narrative of exploitation rather than a mere technical violation.

Current institutional arrangements mean that there is little counterweight to the commercial incentives for employers which can result in compromised employment rights for employees. In order to provide ballast to support existing employment rights legislation, government agencies, support agencies and community organisations must work in tandem to identify and pursue incidences of exploitation in the workplace. This requires intelligence from the affected individuals who must in turn be supported in their efforts to access justice. More significantly, it requires the political will to challenge powerful commercial interests and look beyond short term economic gain.

When considering ways forward there are examples of existing good practice cited by interviewees which should be drawn on. The success of the GLA in tackling the worst of abuses in the agricultural and food processing sectors was cited by a number of interviewees

and attributed in part to the robust powers of enforcement relating to a comprehensive suite of licensing standards. This gives them a helicopter view of the impact of breaches in employment law which sensitizes them to indicators of possible labour exploitation. The ability of support agencies to act as a bridge between migrant workers and enforcement agencies was also noted with particular appreciation shown for the proactive approach in this regard of the Ethnic Minority Support Unit at Newry and Mourne Council.

5. Recommendations

Finding: Authority to enforce employment legislation is currently decentralized to a number of agencies within various government departments. This has limited the opportunities for intelligence sharing between agencies and supports an approach to enforcement which regards non-compliance with employment law as a technical breach rather than as a possible indicator of more widespread exploitation. This decentralized approach weakens the overall impact of employment legislation.

Recommendation 1:

The relevant government departments and agencies (**HMRC, DARD, DEFRA, DEL**) should initiate discussions to consider the viability of creating a Northern Ireland Employment Rights Authority, such as exist in other European Member States. This would negate the need for legislative gateways between agencies, help develop a comprehensive picture of employment conditions in businesses and help monitor trends in industries.

Recommendation 2:

Discussions should be initiated within and between the relevant departments and agencies (**HMRC, DARD, DEFRA, DEL**) to look at ways of addressing barriers to information sharing, more effective enforcement and the resource implications of both.

Finding: Enforcement agencies rely on intelligence from individuals in order to ensure compliance with employment rights legislation. However this intelligence is difficult to acquire. In many cases workers are not aware of their rights under the legislation nor of the procedures entailed and support available in lodging a complaint.

Recommendation 3:

NISMP should hold a Labour Subgroup meeting for enforcement and support and advice agencies to identify opportunities for addressing the above issues.

Recommendation 4:

NILGA should initiate discussions with the Local Government network to set up a small number of employment support hubs following the model of the Ethnic Minority Support Unit in Newry and Mourne Council. These hubs will act as liaison between migrant workers and advice and support organisations, as well as enforcement agencies, and be proactive in building the capacity of migrant communities to self-organise.

Recommendation 5:

NISMP should arrange for the production of information regarding employment rights and related Northern Ireland specific contacts. It should explore with partner agencies including the Home Office the best channels and mediums through which to supply this advice to foreign nationals who have been given or are about to be given permission to enter the UK to work in Northern Ireland.

Recommendation 6:

OFMdFM should initiate and encourage discussions at Ministerial level around the provision of employment rights information and regionally specific contacts for those travelling to the UK on a work permit at the point of receipt of this permit.

Finding: Access to justice can be difficult for both low-paid workers and migrant workers under the current system: costs are prohibitive for those on low income, tribunal arrangements and procedures are not always deemed as user-friendly. In cases which are judged in favour of the complainant, the awarded compensation may continue to be withheld by the employer.

Recommendation 7:

In addition to the funding it already provides for workers to be represented at tribunals, **DEL** should also provide funding to appropriate organisations, in order to support increased tribunal representation for migrant workers.

Recommendation 8:

The **Industrial and Fair Employment Tribunals** should develop a set of guidelines to make the experience of bringing a case to tribunal more user friendly and also ensure that the information it produces is accessible for migrant workers.

Recommendation 9:

DEL and DOJ should initiate discussions to look at ways of improving and making it easier to enforce tribunal awards.

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